

Chapter 2

Independent Corporations Act

63E-2-101 Title.

This chapter is known as the "Independent Corporations Act."

Enacted by Chapter 201, 2001 General Session

63E-2-102 Independent corporations.

An independent corporation is granted a franchise to incorporate in this state in accordance with this title and its authorizing statute.

Enacted by Chapter 201, 2001 General Session

63E-2-103 Public purpose -- Legislative findings.

- (1) Each independent corporation shall have a specific public purpose related to the state or its citizens stated in its authorizing statute.
- (2) Prior to enacting its authorizing statute, the Legislature shall make a finding that the independent corporation needs to be created by the state or be given by the state the right to exist and conduct its affairs as an independent corporation to serve its public purpose.
- (3) Prior to enacting an authorizing statute, the Legislature shall also make a finding that:
 - (a) if the independent corporation receives ongoing state funding for operations, it:
 - (i) performs a public purpose that is not performed by private entities; or
 - (ii) acts as a trustee over money held in trust;
 - (b) if the independent corporation does not receive ongoing state funding for operations, it requires:
 - (i) exemption from federal or state income tax to meet its public purpose; or
 - (ii) the interest on its indebtedness to be exempt from federal or state income tax to meet its public purpose; or
 - (c) the independent corporation is created by the Utah Constitution.

Enacted by Chapter 201, 2001 General Session

63E-2-104 Legislative review.

- (1) Each independent corporation is subject to review by the Retirement and Independent Entities Committee in accordance with Chapter 1, Independent Entities Act.
- (2) Notwithstanding Section 36-12-15, the Office of Legislative Auditor General may conduct comprehensive and special purpose audits, examinations, and reviews of any independent corporation.
- (3) Each independent corporation shall report, as requested, to the committee on matters related to audits.

Amended by Chapter 8, 2003 General Session

63E-2-105 Boards.

- (1) As used in this section, "director" includes a trustee or other board member.
- (2) Each independent corporation shall be governed by a board of directors.

- (3) The authorizing statute of each independent corporation shall specify:
- (a) the process for appointing, removing, and replacing directors;
 - (b) the number and terms of office for directors;
 - (c) the board chair selection procedure;
 - (d) board quorum requirements;
 - (e) director qualifications; and
 - (f) the duties and fiduciary responsibilities of directors.

Enacted by Chapter 201, 2001 General Session

63E-2-106 Powers.

Except as specifically modified in its authorizing statute, each independent corporation shall have the power to:

- (1) exist as a:
 - (a) public corporation; or
 - (b) quasi-public corporation;
- (2) perform its stated public purpose;
- (3) sue and be sued in its own name;
- (4) retain and be represented by legal counsel independent of the attorney general;
- (5) create foundations or subsidiaries;
- (6) act in accordance with all other powers granted in its authorizing statute and by duly issued license or franchise;
- (7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that do not conflict with:
 - (a) this title;
 - (b) the authorizing statute of the independent corporation; or
 - (c) statutes and regulations to which the independent corporation is subject.

Enacted by Chapter 201, 2001 General Session

63E-2-107 Prohibited participation.

Except as specifically modified in its authorizing statute, each independent corporation may not participate in the:

- (1) issuance of bonds that are the obligation of the state; or
- (2) services provided to state agencies, including:
 - (a) fuel dispensing;
 - (b) motor pool services;
 - (c) surplus property services;
 - (d) information technology services; or
 - (e) archive services.

Amended by Chapter 220, 2013 General Session

63E-2-108 Eligible participation.

Except as specifically modified in its authorizing statute, each independent corporation may participate in the state retirement system.

Enacted by Chapter 201, 2001 General Session

63E-2-109 State statutes.

- (1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:
 - (a) Title 51, Chapter 5, Funds Consolidation Act;
 - (b) Title 51, Chapter 7, State Money Management Act;
 - (c) Title 63A, Utah Administrative Services Code;
 - (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (e) Title 63G, Chapter 4, Administrative Procedures Act;
 - (f) Title 63G, Chapter 6a, Utah Procurement Code;
 - (g) Title 63J, Chapter 1, Budgetary Procedures Act;
 - (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
 - (i) Title 67, Chapter 19, Utah State Personnel Management Act.
- (2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:
 - (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (b) Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) Each independent corporation board may adopt its own policies and procedures governing its:
 - (a) funds management;
 - (b) audits; and
 - (c) personnel.

Amended by Chapter 347, 2012 General Session

63E-2-110 Budgetary and fiscal requirements.

- (1) The board of each independent corporation shall annually adopt a budget.
- (2)
 - (a) All money held in trust by an independent corporation is not public funds, even if they were public funds before the money was received by the independent corporation.
 - (b) The money of an independent corporation is not required to be held in the custody of the state treasurer.

Amended by Chapter 342, 2011 General Session

63E-2-111 State liability.

Except as expressly provided in this title or in an authorizing statute, the state is not liable for any independent corporation's obligations, expenses, debts, and liabilities.

Enacted by Chapter 201, 2001 General Session